

EXHIBIT A

FALAKASSA LAW, P.C.

Joshua s. Falakassa (SBN: 295045)

Gregory Lang (SBN: 335036)

1901 Avenue of the Stars Suite # 450

Los Angeles, California 90067

Tel.: (818) 456-6168 | Fax: (888) 505-0868

Email: josh@falakassalaw.com

Attorneys for Plaintiff,

Espri L'heureux

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ORANGE****Assigned for All Purposes**

Judge Theodore Howard

ESPRI L'HEUREUX, an individual,

Plaintiff,

v.

VIVAVENTURES OIL SANDS, a Utah

Company; VIVAKOR, INC., a Nevada

Corporation; RPC Design and

Manufacturing, LLC, a Utah Limited

Liability Company; and DOES 1 through 20,

inclusive,

Defendants.

) Case No.: 30-2022-01243706-CU-WT-CJC

) **COMPLAINT FOR DAMAGES**) **(1) MISCLASSIFICATION AS EXEMPT
EMPLOYEE;**) **(2) FAILURE TO PROVIDE MEAL
PERIODS;**) **(3) FAILURE TO PROVIDE REST
PERIODS;**) **(4) FAILURE TO PROVIDE ITEMIZED
WAGE STATEMENTS;**) **(5) FAILURE TO PAY WAGES DUE AT
TERMINATION;**) **(6) FAILURE TO TIMELY PAY
WAGES;**) **(7) PREGNANCY/SEX
DISCRIMINATION IN VIOLATION
OF FEHA;**) **(8) DISCRIMINATION IN VIOLATION
OF CFRA;**) **(9) INTERFERENCE WITH CFRA
RIGHTS;**) **(10) RETALIATION IN VIOLATION OF
CFRA;**) **(11) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**) **(12) UNFAIR BUSINESS PRACTICES—
BUSINESS & PROFESSIONS CODE
SECTIONS 17200 ET. SEQ.**

COMPLAINT FOR DAMAGES

1 of 18

1 **DEMAND FOR JURY TRIAL**

2
3 **COMES NOW** Plaintiff Espri L'Heureux ("Plaintiff") for the following allegations and
4 causes of action against Defendant Vivaventures Oil Sands, Defendant Vivakor, Inc., Defendant
5 RPC Design & Manufacturing, LLC; and Does 1 through 20 (collectively "Defendants"):

6 **PARTIES**

7 1. Plaintiff is an adult female who at all relevant times is and was residing in the
8 State of California.

9 2. Plaintiff is informed and believes and on that basis alleges that Defendant
10 Vivaventures Oil Sands ("Defendant"), is and at all relevant times was a company organized and
11 existing under the laws of the State of Utah, and wholly owned subsidiary of Vivakor, Inc.
12 Defendant does business in the County of Orange, State of California, acquiring properties for
13 development, and overseeing its subsidiaries primarily engaged in producing solvents and
14 methodologies for the extraction of crude oil. Plaintiff worked for Defendant out of its corporate
15 office in Irvine, California, in the County of Orange

16 3. Plaintiff is informed and believes and on that basis alleges that Defendant
17 Vivakor, Inc. ("Defendant" or "Vivakor"), is and at all relevant times was a corporation
18 organized and existing under the laws of the State of Nevada. Defendant does business in the
19 County of Orange, State of California, acquiring properties for development, and overseeing its
20 subsidiaries primarily engaged in producing solvents and methodologies for the extraction of
21 crude oil. Plaintiff worked for Defendant out of its corporate office in Irvine, California, in the
22 County of Orange.

23 4. Plaintiff is informed and believes and on that basis alleges that Defendant RPC
24 Design and Manufacturing, LLC ("Defendant" or "RPC"), is and at all relevant times was a
25 wholly owned subsidiary of Vivakor, Inc., organized and existing under the laws of the State of
26 Utah. Defendant does business in the County of Orange, State of California, primarily engaged
27 in producing solvents and methodologies for the extraction of crude oil. Plaintiff worked for
28 Defendant out of its corporate office in Irvine, California, in the County of Orange.

1 5. Defendants employed Plaintiff and more than 5 employees. As such, Defendant
2 was at all relevant times an “employer” defined by the California Fair Employment and Housing
3 Act (“FEHA”) and the California Family Rights Act (“CFRA”).

4 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
5 Does 1 through 20, inclusive, and therefore sue these Defendants by such fictitious names.
6 Plaintiff will amend this Complaint to allege their true names and capacities when the same have
7 been ascertained. Plaintiff is informed and believes and thereupon alleges that each of the
8 fictitiously named Defendants is legally and/or equitably responsible for the occurrences herein
9 alleged. At all times herein mentioned Defendants, and each of them, were the agents and
10 employees of the other Defendants, and each of them, and in doing the things hereinafter alleged,
11 were acting in the course and scope of the agency and employment and with the permission of
12 Defendants, and each of them.

13 **JURISDICTION AND VENUE**

14 7. This Court has subject matter jurisdiction over this matter because at all times
15 relevant herein, Plaintiff was employed and terminated by Defendants in the County of Orange.
16 Therefore, all of Plaintiff’s injuries occurred in Orange County, California to a sum of at least
17 \$25,000.

18 8. Venue is proper in the County of Orange because at all times relevant herein
19 Plaintiff worked for Defendants in Irvine, California in the County of Orange. Defendants have
20 at all relevant times maintained, owned and managed properties in Orange County, California
21 and committed wrongful conduct against Plaintiff in Orange County, California.

22 9. This Court is the proper court for trial in this action in that the actions and
23 omissions of Defendant as alleged herein were made within this Court’s jurisdictional area.

24 **COMMON FACTUAL ALLEGATIONS**

25 10. Defendant hired Plaintiff on or about November 2019 as a receptionist and front
26 desk worker. At all relevant times, Plaintiff successfully performed her job duties to the
27 satisfaction of her managers and supervisors.
28

1 11. At all relevant times, Defendants obviously misclassified Plaintiff as an
2 independent contractor. Amongst other things, Plaintiff was not customarily engaged in an
3 independently established trade or business of the same nature as the work performed for
4 Defendants.

5 12. Nevertheless, on or about December 2020, Plaintiff informed her employers that
6 she was pregnant.

7 13. Throughout her pregnancy, Plaintiff would request time off for doctor's
8 appointments. Time for this pregnancy-related appointments was routinely granted by
9 Defendants.

10 14. On or about May 2021, due to her pregnancy, Plaintiff requested maternity leave.
11 Plaintiff had to request maternity leave multiple times, until it was eventually approved during an
12 in-person conversation with Tyler Nelson on or about the week of June 14, 2021. Plaintiff had a
13 further conversation about maternity leave via email on or about June 24, 2021. Plaintiff's
14 understanding from these conversations with her supervisor Tyler Nelson was that she would be
15 granted maternity leave of six weeks. Plaintiff gave birth on July 6, 2021, and informed her
16 supervisor on July 27, 2021 that she would return on August 18, 2021.

17 15. On August 2, 2021, Plaintiff's supervisor, Tyler Nelson, informed her that
18 business was slow and that she was not eligible for maternity leave or unemployment because
19 she was not an employee, but was an independent contractor.

20 16. On or about September 9, 2021, Plaintiff was informed via a telephone
21 conversation with an agent of Defendants that Defendants had no intentions to bring her back to
22 work. At all relevant times, Plaintiff was misclassified as an independent contractor and was
23 misinformed of her rights under California law, including but not limited to the right to maternity
24 leave, the right to the protections of the Fair Employment and Housing Act ("FEHA"), and her
25 right to baby bonding time and pregnancy disability leave ("PDL") under the California Family
26 Rights Act ("CFRA").

27 17. Defendants' acts and/or omissions resulted in substantial improper cost savings to
28 the Defendants, as well as the improper loss of pay, benefits and protections to Plaintiff. Plaintiff

1 worked diligently for nearly two years while being denied, among other things, legally required
 2 and uninterrupted meal and rest break times during multiple periods, at the direction and
 3 oversight of Defendants. Plaintiff was also not timely paid all the compensation to which she was
 4 entitled upon the termination of her employment with Defendants and was not reimbursed for
 5 necessary business expenditures. Instead, Defendants have willfully failed to ever pay Plaintiff
 6 certain accrued wages and other compensation due to her.

7 18. Plaintiff is informed and believes, and based thereon alleges that Defendants
 8 discriminated against Plaintiff on account of her sex and pregnancy by terminating her for
 9 exercising her right to pregnancy-related leave.

10 19. Plaintiff further alleges that Defendants violated California's CPRA for
 11 interfering with Plaintiff's attempt to exercise the right to baby bonding leave, and/or for
 12 retaliation against Plaintiff for taking leave. (Gov. Code, § 12945.2 *et seq.*).

13 20. Plaintiff also alleges that her termination was in violation of California's
 14 fundamental public policy of protecting the pregnant as encompassed by the FEHA and CFRA.

15 21. On December 3, 2021, Plaintiff filed with the California Department of Fair
 16 Employment and Housing ("DFEH") a complaint-charging Defendant with discrimination in
 17 violation of FEHA. On the same date, the DFEH issued Plaintiff a right-to sue letter.

18 **FIRST CAUSE OF ACTION**

19 **(Misclassification as an Independent Contractor)**

20 **(Against All Defendants)**

21 22. Plaintiff re-alleges each and every allegation set forth in the paragraphs above,
 22 inclusive, and incorporates each by reference as through fully set forth hereat.

23 23. The California Supreme Court has applied the "ABC test" through its landmark
 24 decision in *Dynamex*. (See *Dynamex Operations West, Inc. v. The Superior Court of Los Angeles*
 25 *County* (2018) 4 Cal.5th 903.)(See *Vazquez v. Jan-Pro Franchising International, Inc.* (2019)
 26 923 F.3d 575.) The "ABC Test" is the relevant test to determine whether Plaintiff was
 27 misclassified as an independent contractor. The three-prong test requires satisfaction of all three
 28 elements which are:

1 “(1) that the worker is free from the control and direction of the hirer in connection with
 2 the performance of the work, both under the contract for the performance of such work
 3 and in fact;
 4 (2) that the worker performs work that is outside the usual course of the hiring entity's
 5 business; and
 6 (3) that the worker is customarily engaged in an independently established trade,
 7 occupation, or business of the same nature as the work performed for the hiring entity.”
 8 (*Dynamex Operations West, Inc. v. The Superior Court of Los Angeles County* (2018) 4
 9 Cal.5th 903, 916-917).

10 24. Defendants will not be able to establish a single prong, much less all three.

11 Plaintiff was a receptionist, which is a standard feature of any corporate office. Defendants
 12 directed Plaintiff's day-to-day activities. Plaintiff was not engaged in an independent trade of
 13 being a receptionist while she worked for Defendants only.

14 25. Nonetheless, the Defendants misclassified Plaintiff as an independent contractor
 15 while knowingly benefiting from Plaintiff working full time for them.

16 26. As an actual and proximate cause of the Defendants' violations of the applicable
 17 California wage and hour laws, as well as FEHA, CFRA, and other rights and privileges granted
 18 to employees in California, Plaintiff has suffered resulting financial damage in form of lost
 19 wages and benefits.

20 **SECOND CAUSE OF ACTION**

21 **(Failure to Provide Meal Periods or Compensation)**

22 **(Against all Defendants)**

23 27. Plaintiff re-alleges each and every allegation set forth in the paragraphs above,
 24 inclusive, and incorporates each by reference as through fully set forth hereat.

25 28. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
 26 period of more than five (5) hours without a meal break of not less than thirty (30) minutes in
 27 which the employee is relieved of all of his or her duties. Furthermore, no employer shall employ
 28 an employee for a work period of more than ten (10) hours per day without providing the
 employee with a second meal period of not less than thirty (30) minutes in which the employee is
 relieved of all of her or her duties.

1 29. At all relevant times, because of Defendants' misclassification of Plaintiff,
 2 Defendants failed to provide timely and compliant meal periods of at least 30-minutes before the
 3 fifth hour of work, and second meal periods for shifts in excess of ten hours. Additionally,
 4 Defendants failed to pay Plaintiff one additional hour of pay at the employee's regular rate of
 5 compensation for each workday that a complaint meal period was not provided.

6 30. Pursuant to Labor Code § 226.7, if an employer fails to provide an employee with
 7 a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare
 8 Commission, the employer shall pay the employee one additional hour of pay at the employee's
 9 regular rate of compensation for each work day that a non-compliant meal period is not provided.

10 31. By failing to keep adequate time records, as required by Labor Code § 226 and
 11 §1174, Defendant made it difficult to calculate the unpaid meal period compensation due
 12 Plaintiff.

13 32. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of one
 14 additional hour of pay at the employee's regular rate of compensation for each work day that a
 15 complaint meal period was not provided, in amounts to be determined at trial, and is entitled to
 16 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
 17 Labor Code § 226 and § 226.7, Code of Civil Procedure § 1021.5, and Civil Code § 3287.

18 **THIRD CAUSE OF ACTION**

19 **(Failure to Provide Rest Periods or Compensation)**

20 **(Against all Defendants)**

21 32. Plaintiff re-alleges each and every allegation set forth in the paragraphs above,
 22 inclusive, and incorporates each by reference as through fully set forth hereat.

23 33. At all relevant times, because of Defendants' misclassification of Plaintiff,
 24 Defendants failed to provide Plaintiff with all rest periods for every four (4) hours or major
 25 fractions thereof worked per day by Plaintiff. Additionally, Defendants failed to pay Plaintiff one
 26 additional hour of pay at the employee's regular rate of compensation for each workday that a
 27 complaint rest period was not provided.
 28

1 34. By their failure to provide rest periods for every four (4) hours or major fractions
2 thereof worked per day by Plaintiff, and failing to provide compensation for such unprovided
3 rest periods, Defendants willfully violated the provisions of Labor Code § 226.7 and the IWC
4 Wage Order.

5 35. Pursuant to Labor Code § 226.7, if an employer fails to provide an employee with
6 a rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the
7 employer shall pay the employee one additional hour of pay at the employee's regular rate of
8 compensation for each workday that a complaint rest period is not provided.

9 36. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of one
10 additional hour of pay at Plaintiff's regular rate of compensation for each work day that the rest
11 period was not provided, in amounts to be determined at trial, and is entitled to recovery of such
12 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code § 226
13 and § 226.7, Code of Civil Procedure §1021.5, and Civil Code § 3287.

14 **FOURTH CAUSE OF ACTION**

15 **(Failure to Provide Accurate Itemized Wage Statements)**

16 **(Against all Defendants)**

17 37. Plaintiff re-alleges each and every allegation set forth in the paragraphs above,
18 inclusive, and incorporates each by reference as through fully set forth hereat.

19 38. California Labor Code § 226, subdivision (a) requires Defendants to provide
20 Plaintiff with itemized wage statements consisting of gross wages earned, total hours worked, all
21 deductions from payment of wages, net wages earned, the inclusive dates of the period for which
22 she is paid, the name and address of the legal entity that is her employer, and all applicable
23 hourly rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate by Plaintiff. Defendants, and each of them, have knowingly and intentionally
25 failed to comply with Labor Code § 226, subdivision (a) on each and every wage statement that
26 should have been provided to Plaintiff.

1 50. At all times herein mentioned, Government Code § 12940 *et seq.*, § 12926.1, §
2 12945.2 (“FEHA”) were in full force and effect and binding upon Defendants. The FEHA
3 requires that Defendants refrain from discharging any person from employment on the basis of
4 sex, including pregnancy.

5 51. Plaintiff is, and at all times herein mentioned was a female “employee” who was
6 pregnant and took maternity leave during her employment with Defendants.

7 52. Plaintiff is informed and believes and thereon alleges that Defendants terminated
8 Plaintiff substantially based upon her sex/pregnancy.

9 53. As such, Defendants’ termination of Plaintiff was in violation of the FEHA.
10 Plaintiff’s pregnancy and/or female sex was a substantial motivating reason for Defendants’
11 decision to terminate Plaintiff. Plaintiff was harmed, and Defendants’ conduct was a substantial
12 factor in causing Plaintiff’s harm.

13 54. As a result of Defendants’ wrongful discharge of Plaintiff, she has suffered and
14 continues to suffer damages in the form of lost wages and other employment benefits, and severe
15 emotional and physical distress, the exact amount of which will be proven at trial.

16 55. Defendants and each of them acted for the purpose of causing Plaintiff to suffer
17 financial loss and severe emotional distress and physical distress and are guilty of oppression and
18 malice, justifying an award of exemplary and punitive damages which will be proven at trial.

19 56. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
20 forced to hire attorneys to prosecute her claims herein and has incurred and is expected to
21 continue to incur attorneys’ fees and costs in connection therewith. Plaintiff is entitled to recover
22 attorneys’ fees and costs under California Government Code §12965(b).

23 57. The actions taken against Plaintiff were carried out and ratified by officers and
24 managers of Defendants. In addition, Defendants had in place policies and procedures that
25 specifically prohibited discrimination based on sex/pregnancy and required Defendants’
26 managers, officers, and agents to prevent sex/pregnancy discrimination. However, Defendants
27 chose to consciously and willfully ignore said policies. Therefore, Defendants’ conduct was
28 outrageous, malicious, oppressive and done in wanton disregard for the rights of Plaintiff and

1 other female/pregnant employees. Each Defendant aided, abetted, participated, authorized,
 2 ratified, and/or conspired to engage in the wrongful conduct alleged herein. Plaintiff should,
 3 therefore, be awarded exemplary and punitive damages against each Defendant in an amount to
 4 be determined at trial.

5 **EIGHTH CAUSE OF ACTION**
 6 **(Discrimination in Violation of CFRA)**
 7 **(Against All Defendants)**

8 58. Plaintiff incorporates each allegation set forth in the paragraphs above, inclusive,
 9 and incorporates each by reference as through fully set forth hereat.

10 59. All relevant times herein, Plaintiff was entitled to protected leave under the
 11 FEHA, which includes Government Code § 12945.2 et seq. ("CFRA"). Defendants did business
 12 in the State of California, and Plaintiff is informed and believes Defendants employed 5 or more
 13 full or part-time employees.

14 60. It is unlawful for an employer to discriminate against any employee for exercising
 15 their right to unpaid leave under the CFRA.

16 61. Plaintiff has a disability under FEHA/CFRA and was further entitled to both
 17 Pregnancy Disability Leave ("PDL") and baby-bonding leave under CFRA. Plaintiff gave
 18 appropriate notice of her need to be absent from work at least 30 days before leave was to begin,
 19 or alternatively as soon as practicable after she learned of the need for medical leave.
 20 Nevertheless, Plaintiff was terminated while on CFRA leave, and Plaintiff's medical leave was a
 21 substantial, motivating, and determinative factor for Defendants to terminate Plaintiff's
 22 employment.

23 62. As a proximate result of the aforesaid acts and omissions of Defendants, Plaintiff
 24 has suffered actual, consequential and incidental financial loss, including, loss of wages and
 25 benefits, and the intangible loss of employment related opportunities in her field, and future
 26 employment in her profession.

27 63. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
 28 forced to hire attorneys to prosecute her claims herein, and has incurred and is expected to

1 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
 2 attorneys' fees and costs under California Government Code §12965(b).

3 64. The actions taken against Plaintiff were carried out and ratified by officers and
 4 managers of Defendants. In addition, Defendants had in place policies and procedures that
 5 specifically prohibited discrimination based on disability and required Defendants' managers,
 6 officers, and agents to prevent disability discrimination. However, Defendants chose to
 7 consciously and willfully ignore said policies. Therefore, Defendants' conduct was outrageous,
 8 malicious, oppressive and done in wanton disregard for the rights of Plaintiff and other disabled
 9 employees. Each Defendant aided, abetted, participated, authorized, ratified, and/or conspired to
 10 engage in the wrongful conduct alleged herein. Plaintiff should, therefore, be awarded exemplary
 11 and punitive damages against each Defendant in an amount to be determined at trial.

12 **NINTH CAUSE OF ACTION**

13 **(Interference with CFRA Rights)**

14 **(Against All Defendants)**

15 65. Plaintiff incorporates each allegation set forth in the paragraphs above, inclusive,
 16 and incorporates each by reference as through fully set forth hereat.

17 66. All relevant times herein, Plaintiff was entitled to protected leave under the
 18 FEHA, which includes Government Code § 12945.2 et seq. ("CFRA"). Defendants did business
 19 in the State of California, and Plaintiff is informed and believes Defendants employed 5 or more
 20 full or part-time employees.

21 67. The CFRA provide job security to an employee who is absent from work because
 22 of the employee's pregnancy-related disability and baby bonding, amongst other things.

23 68. It is unlawful for an employer to interfere with, restrain, or deny the exercise of or
 24 the attempt to exercise, any right under the CFRA. (Cal. Gov. Code § 12945.2.) It is likewise
 25 unlawful for an employer to refuse to grant an employee medical leave under the CFRA.

26 69. Defendants willfully interfered with Plaintiff's FMLA/CRFA rights and her
 27 exercise of those rights by terminating her employment while she was on CFRA leave. Plaintiff
 28 gave appropriate notice of her need to be absent from work at least 30 days before leave was to

1 begin, or alternatively as soon as practicable after she learned of the need for leave. Nevertheless,
 2 Plaintiff was terminated while on CFRA leave, and Plaintiff's leave was a substantial,
 3 motivating, and determinative factor for Defendants to terminate Plaintiff's employment.
 4 Further, Defendants' made false representations to Plaintiff about her rights under CFRA via
 5 emails on or about August 2, 2021.

6 70. As a proximate result of the aforesaid acts and omissions of Defendants, Plaintiff
 7 has suffered actual, consequential and incidental financial loss, including, loss of wages and
 8 benefits, and the intangible loss of employment related opportunities in her field, and future
 9 employment in her profession. Further, Defendants' interference with Plaintiff's CFRA rights
 10 was not in good faith; therefore, Plaintiff may recover, as liquidated damages, an additional
 11 amount equal to the entire award of lost wages, benefits, etc., and interest.

12 71. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
 13 forced to hire attorneys to prosecute her claims herein, and has incurred and is expected to
 14 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
 15 attorneys' fees and costs. (29 U.S.C. § 2617(a)(3) and 29 C.F.R. § 825.400(c); Cal. Gov. Code, §
 16 12965, subd. (b).)

17 **TENTH CAUSE OF ACTION**

18 **(Retaliation in Violation of CFRA)**

19 **(Against All Defendants)**

20 72. Plaintiff incorporates each allegation set forth in the paragraphs above, inclusive,
 21 and incorporates each by reference as through fully set forth hereat.

22 73. All relevant times herein, Plaintiff was entitled to protected leave under the
 23 FEHA, which includes Government Code § 12945.2 et seq. ("CFRA"). Defendants did business
 24 in the State of California, and Plaintiff is informed and believes Defendants employed 5 or more
 25 full or part-time employees.

26 74. It is unlawful for an employer to retaliate against an employee for requesting or
 27 taking protected leave under the CFRA. (Cal. Gov. Code § 12945.2(l).)
 28

1 81. As a proximate result of the aforesaid acts and omissions of Defendants, Plaintiff
2 has suffered actual, consequential and incidental financial loss, including, loss of wages and
3 benefits, and the intangible loss of employment related opportunities in her field, and future
4 employment in her profession.

5 82. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
6 forced to hire attorneys to prosecute her claims herein, and has incurred and is expected to
7 continue to incur attorneys' fees and costs in connection therewith. As a result of the acts of
8 Defendants as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs as
9 provided in Code of Civil Procedure § 1021.5.

10 **TWELFTH CAUSE OF ACTION**

11 **(Unfair Competition –Violation of Business and Profession Code 17200 et seq.)**

12 **(Against All Defendants)**

13 83. Plaintiff incorporates each allegation set forth in the paragraphs above, inclusive,
14 and incorporates each by reference as through fully set forth hereat.

15 84. Defendants' misclassification of Plaintiff and related failure to compensate for
16 unprovided meal/rest periods as required under the IWC Wage Orders and under the California
17 Labor Code, failure to issue accurate wage statements as alleged herein, failure to provide all
18 wages due upon termination, failure to timely pay wages, failure to reimburse necessary business
19 expenses, violations of FEHA and CFRA, and wrongful termination in violation of public policy
20 constitute unlawful activity prohibited by Business & Professions Code §17200, *et seq.*

21 85. The actions of Defendants in failing to pay Plaintiff in a lawful manner, and
22 terminating Plaintiff in violation of Gov. Code § 12940 *et seq.*, as alleged herein, constitute false,
23 unfair, fraudulent and deceptive business practices within the meaning of Business & Professions
24 Code §17200, *et seq.*

25 86. Plaintiff is entitled to an injunction and other equitable relief against such
26 unlawful practices in order to prevent future damage, for which there is no adequate remedy at
27 law, and to avoid a multiplicity of lawsuits.
28

1 87. As a result of their unlawful acts, Defendants should be enjoined from its activity
 2 and restore to Plaintiff the wrongfully withheld compensation pursuant to Business &
 3 Professions Code §17203. Plaintiff is informed and believes and based thereon alleges that
 4 Defendants are unjustly enriched through their misclassification of Plaintiff resulting in her not
 5 receiving premium pay for missed meal periods and rest breaks, failure to pay all wages earned
 6 upon termination, and failure to timely pay wages. Plaintiff is informed and believe and based
 7 thereon alleges that Plaintiff is prejudiced by Defendants' unfair trade practices.

8 88. As a direct and proximate result of the unfair business practices of Defendant,
 9 Plaintiff is entitled to equitable and injunctive relief, including full restitution and/or
 10 disgorgement of all wages and overtime which have been unlawfully withheld from Plaintiff as a
 11 result of the business acts and practices described herein and enjoining Defendant to cease and
 12 desist from engaging in the practices described herein.

13
 14 **WHEREFORE**, Plaintiff prays for the following relief against all Defendants:

15 A. As to the First through Sixth Causes of Action,

- 16 a. Compensatory damages according to proof at trial;
- 17 b. Statutory damages, liquidated damages and penalties.
- 18 c. Prejudgment and post judgment interest; and
- 19 d. Any other relief the court deems proper.

20 B. As to the Seventh through Eleventh Causes of Action,

- 21 a. General and special damages according to proof at trial;
- 22 b. Exemplary and punitive damages according to proof at trial;
- 23 c. Reasonable attorneys' fees and costs under 29 U.S.C. § 2617(a)(3) and 29
 C.F.R. § 825.400(c);
- 24 d. Prejudgment and post judgment interest; and
- 25 e. Any other relief the court deems proper.

26 C. As to the Twelfth Cause of Action,

- 27 a. For preliminary and permanent injunctions pursuant to Business &
 Professions Code §17203, enjoining and restraining Defendants from
 28 continuing the unlawful and unfair business practices set forth above and

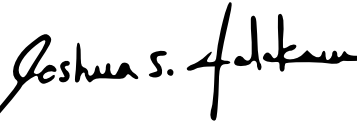
1 requiring the establishment of appropriate and effective means to prevent
2 future violations;

- 3 b. For restitution of wages and benefits due which were acquired by means of
4 any unfair business practice, according to proof.
5 c. For all such other and further relief that the court may deem just and proper.

6 Respectfully Submitted,

7 **FALAKASSA LAW, P.C.**

8 Dated this 2nd of February 2022

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12 _____
13 Joshua S. Falakassa
14 Gregory Lang
15 Attorney for Plaintiff Espri L'heureux
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30-2022-01243706-CU-WT-CJC - ROA # 3 - DAVID H. YAMASAKI, Clerk of the Court By Hailey McMaster, Deputy Clerk.

Items 1-6 below must be completed (see instructions on page 2).

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses

b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court

c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 12, Wrongful termination in violation of FEHA, misclassification, and related causes of action

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Joshua Falakassa

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**CM-010**

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

VIVAVENTURES OIL SANDS; VIVAKOR, INC., a Nevada Corporation; RPC Design and Manufacturing, LLC, a Utah Limited Liability Company; and DOES 1 through 20, inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ESPRI L'HEUREUX, an individual.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): ORANGE COUNTY SUPERIOR COURT
CENTRAL JUSTICE CENTER
700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER: (Número del Caso):
30-2022-01243706-CU-WT-CJC

Judge Theodore Howard

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Joshua Falakassa, 1901 Avenue Of The Stars, Ste 450, Los Angeles, CA 90067-6006, 818-456-6168

DATE: 02/03/2022 DAVID H. YAMASAKI, Clerk of the Court
(Fecha)

Clerk, by
(Secretario)

H. McMaster

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Hailey McMaster

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☒ on behalf of (specify): RPC Design and Manufacturing, LLC
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): Limited Liability Company
4. ☐ by personal delivery on (date):

